

STATE OF NORTH CAROLINA

WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO. 18 CVS 012725

2018 DEC -31 A 10:32

STATE OF NORTH CAROLINA *ex rel.*)
JOSHUA H. STEIN, Attorney General,)

Plaintiff,)

v.)

NICHOLAS KYLE DOWNEY, Individually,)
ACTION TREE PROS, INC., JEREMY RYAN)
BUGG, Individually, PREMIER)
LANDSCAPING & LAWN CARE, LLC,)
TONY BRADLEY ANDERSON, Individually,)
and TRICO TREE SERVICE, LLC,)

Defendants.

CONSENT JUDGMENT

**WITH TONY BRADLEY
ANDERSON AND TRICO TREE
SERVICE, LLC**

THIS CAUSE came on to be heard and was heard before the undersigned Wake County Superior Court Judge for entry of a Consent Judgment between Plaintiff, State of North Carolina, by and through its Attorney General (“the State”), and Defendants TONY BRADLEY ANDERSON, Individually, and TRICO TREE SERVICE, LLC (together “Defendants”). Defendants are represented by counsel, Michael W. Strickland. The Court finds that the parties have resolved the matters in controversy between them and have agreed to the entry of this Consent Judgment by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

I. FINDINGS OF FACT

1.1 Plaintiff State of North Carolina is acting through its Attorney General, Joshua H. Stein, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes to protect the consumer public from unlawful business practices.

1.2 Defendant Tony Bradley (“Brad”) Anderson resides at 5815 Brickhouse Road, Bahama, North Carolina. On information and belief, he engages in the tree cutting and removal business through TRICO Tree Service, LLC.

1.3 Defendant TRICO Tree Service, LLC is a North Carolina limited liability company with its principal place of business at 5815 Brickhouse Road, Bahama, North Carolina. Defendant Anderson is the sole owner, and is managing agent, of defendant TRICO Tree Service, LLC. At all times relevant to this action, defendants Anderson and Defendant TRICO Tree Service, LLC engaged in the tree trimming and removal business in North Carolina.

1.4 The State alleges that Defendants engaged in trade and commerce affecting consumers within the meaning of N.C. Gen. Stat. § 75-1.1, which included: as a subcontractor, charging and/or agreeing to charge a contractor for tree removal services provided by Defendants amounts, ultimately to be borne by the homeowners or their insurer, that were unreasonably excessive under the circumstances during a state of emergency declared by the Governor of North Carolina, in violation of North Carolina’s price gouging law, N.C. Gen. Stat. §§ 75-38.

1.5 Defendants deny the State’s allegations in paragraph 1.4 but, in the interest of compliance and resolution of this matter, desire to resolve this controversy without further proceedings and are therefore willing to agree to the entry of this Consent Judgment.

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action.

2.2 Venue is proper in Wake County.

2.3 North Carolina’s price gouging law, N.C. Gen. Stat. §§ 75-38, governs the alleged business practices of Defendants that gave rise to this controversy.

2.4 The North Carolina Attorney General is the proper party to commence these proceedings under the authority of N.C. Gen. Stat. §§ 75-14 and -15, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of North Carolina.

2.5 This Consent Judgment shall be governed by the laws of the State of North Carolina.

2.6 Entry of this Consent Judgment is just and proper and in the public interest.

2.7 The State's Amended Complaint states a cause of action against Defendants upon which relief may be granted, and the Court finds good and sufficient cause to adopt this agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for entry of this Consent Judgment.

2.8 The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties.

2.9 The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

III. GENERAL PROVISIONS

3.1 Other State Governmental Entities. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina and nothing in this Consent Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State for transactions not subject to this action.

3.2 Retention of Jurisdiction. The Court retains jurisdiction over this action to take any further action deemed necessary to enforce this Consent Judgment, including imposition of penalties, and to award the State judgments for any costs, including attorney's fees, it incurs in the event of noncompliance by any of the Defendants.

3.3 No Sanction of Business Practices. Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the North Carolina Attorney General has sanctioned, condoned, or approved any part or aspect of Defendants' business operations.

3.4 Release of Claims. This Consent Judgment shall fully resolve all legal claims and issues raised in the State's Amended Complaint against Defendants for their activities up to the date of this Consent Judgment.

3.5 Joint and Several Liability. Defendants shall be jointly and severally liable for all amounts that are due and owed under this Consent Judgment.

3.6 No Admission of Violation of Law. This Consent Judgment shall not be construed as, or be evidence of, any admission of liability by Defendants, nor shall it be construed as a finding by this Court of any violation of North Carolina law, or any other law. Defendants deny any liability and intend merely to avoid litigation of disputed claims.

3.7 Private Right of Action. Nothing in this Consent Judgment shall be construed to affect any private right of action that a consumer, person, entity, or by any local, state, federal or other governmental entity, may hold against the Defendants.

3.8 Regulation of Other Conduct. Nothing in this Consent Judgment is intended to relieve Defendants of their responsibility to comply with all applicable North Carolina laws.

IV. PERMANENT INJUNCTIVE RELIEF

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

4.1 Defendants and their businesses, officers, agents, servants, employees, successors, assigns, attorneys, and any others acting in concert or under the actual direction or control of Defendants, are hereby permanently restrained and enjoined from engaging in acts and practices

prohibited by North Carolina's Unfair and Deceptive Trade Practices Act, found at N.C. Gen. Stat. §§ 75-1.1 *et seq.*

4.2 Defendants and their businesses, officers, agents, servants, employees, successors, assigns, attorneys, and any others acting in concert or under the actual direction or control of Defendants, are hereby permanently restrained and enjoined, pursuant to N.C. Gen. Stat. § 75-14, specifically from:

4.2.1 charging or agreeing to charge for tree removal services a price that is unreasonably excessive under the circumstances during a state of emergency or abnormal market disruption declared by the Governor of North Carolina, in violation of North Carolina's price gouging law, N.C. Gen. Stat. §§ 75-38, and

4.2.2 seeking, obtaining, or receiving payment from a consumer or the consumer's insurer or property manager any tree removal or debris cleanup work done in Wilmington, North Carolina at 930 Hunting Ridge Road and 3260 Camden Circle in September of 2018.

4.3 Defendants shall fully cooperate with the State in its continuing litigation of this matter, including but not limited to producing documents and providing truthful testimony in the form of affidavits, depositions, and live testimony at any hearing or trial, if requested by the State.

4.4 Defendants acknowledge that a material part of the consideration for the Attorney General to enter into this Consent Judgment is Defendants' representation that Defendants have received no monies—either directly or indirectly—from consumers, their insurers, or their property manager for the tree and debris removal work set forth in the Amended Complaint. If, upon motion by the State, the Court finds that Defendants have at any time received monies—either directly or indirectly—from consumers, their insurers, or their property manager for the tree

and debris removal work set forth in the Amended Complaint, the State will be entitled to seek appropriate relief from the Court, including but not limited to restitution and/or disgorgement.

V. MONETARY RELIEF

IT IS FURTHER ORDERED that:

5.1 Attorney Fees. Defendants shall pay the sum of One Thousand Dollars (\$1,000) to the Attorney General to be used for attorney fees, investigative costs, consumer protection enforcement, other consumer protection or restitution purposes, and other purposes allowed by law, at the discretion of the Attorney General. Defendants shall pay the attorney fees amount set forth above via cashier's check or other certified funds made payable to the "North Carolina Department of Justice" on or before the date this Consent Judgment is executed.

5.2 Civil Penalty. Defendants shall jointly and severally pay the State Five Thousand Dollars (\$5,000) in civil penalties. However, payment of this civil penalty is suspended as long as Defendants are in full compliance with the terms of this Consent Judgment. If, at any time, Defendants violate the terms of this Consent Judgment, this penalty shall be immediately due to the State.

SO ORDERED, this the 3 day of December, 2018 at 10:27 o'clock 9.m.

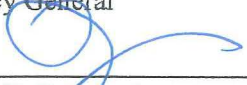


SUPERIOR COURT JUDGE


THE UNDERSIGNED PARTIES HEREBY CONSENT TO THE TERMS AND CONDITIONS OF THIS CONSENT JUDGMENT AS SET FORTH ABOVE, AND HEREBY CONSENT TO ENTRY THEREOF:

PLAINTIFF:

STATE OF NORTH CAROLINA,
ex rel. JOSHUA H. STEIN,
Attorney General


BY: 
K. D. Sturgis
Special Deputy Attorney General

Date: 12-3-2018

BY: 
Daniel T. Wilkes
Assistant Attorney General

Date: 12-3-2018

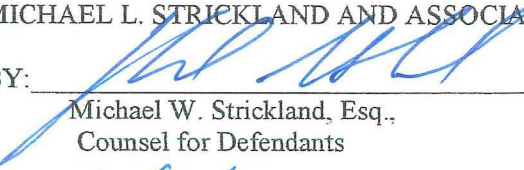
DEFENDANTS:

BY: 
Tony Bradley Anderson
Individually and in his capacity as a
Member and Manager of TRICO
Tree Service, LLC

Date: 12-1-18

COUNSEL FOR DEFENDANTS:

MICHAEL L. STRICKLAND AND ASSOCIATES, LLC

BY: 
Michael W. Strickland, Esq.,
Counsel for Defendants

Date: 12/3/18